

**REMARKS**

Applicants wish to thank Examiners Gibbs and Wang for taking time out of their schedules to conduct an interview with their representatives on August 24, 2005, to help further prosecution of the instant application.

**I. Status of the Claims**

With entry of this amendment, claims 4,5,7,9, 11, 14,15,17, 19, 21, 23, 25, 27, 29, 31, 33, and 39-56 are pending in this application. Claims 1-3, 6, 8, 10, 12-13, 16, 18, 20, 22, 24, 26, 28, 30, 32, and 38 are cancelled. Claims 4,5,7,9, 11, 14, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 39 are rejected. Claims 40-56 are considered withdrawn as allegedly being directed to a non-elected invention. The following rejections are pending:

a. claims 4, 5, 7, 9, 11, 14, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 39 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement, (Office Action mailed June 1, 2005 ("Office Action"), pages 5-7);

b. claims 4, 5, 21, 23, 27, 31, 33, and 39 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Kuo et al., Development, 126: 4223-4234 (1999) ("Kuo") (Office Action., pages 7-12);

Claim 4 is amended to more particularly describe the subject matter of the invention. Support for the "polynucleotide comprising SEQ ID NO: 2 or a sequence having at least 80% sequence identity to SEQ ID NO: 2" of claim 4 may be found, for example, in the claims as-filed and in the specification at page 7, paragraphs 24-25.

The amendments introduce no new matter.

## **II. Claims 40-56 Are Not Drawn to a Non-elected Invention**

The Examiner alleges that claims 40-56 are drawn to a non-elected invention, and thus, were withdrawn from consideration. Applicants respectfully disagree. In the as-filed application from which the original restriction requirement was issued, claim 1 recited “[a] polynucleotide **comprising** a fragment of SEQ ID NO: 1 or a fragment of a sequence that hybridizes under high stringency conditions with SEQ ID NO: 1 . . .” (emphasis added). Applicants agree with the Examiner that a fragment is “an incomplete or isolated portion.” (Office Action, page 3). However, Applicants’ use of the term “comprising” allows for claims that include the entire sequence of SEQ ID NO: 1, which does comprise fragments of SEQ ID NO: 1. Consequently, original claim 1 encompasses the entire sequence of SEQ ID NO: 1 and any claims to the entire sequence fall within the elected invention. Moreover, the groups drawn from the original restriction requirement do not distinguish between entire sequences and fragments of sequences. (Office Action mailed September 23, 2003, pages 2-3). Therefore, there is no basis in the restriction requirement of September 23, 2003, on which to restrict the instant application from including claims to the entire sequence of SEQ ID NO: 1.

For the reasons above, Applicants respectfully request consideration and allowance of claims 40-56.

## **III. The Claims Are Supported by the Specification**

The Examiner rejects claims 4, 5, 7, 9, 11, 14, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 39 under 35 U.S.C. § 112, first paragraph, as allegedly containing subject

matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor had possession of the claimed invention at the time the application was filed. Office Action, page 5. Specifically, the Examiner alleges that “[t]he specification as filed fails to adequately describe those polynucleotides comprising a fragment of SEQ ID NO: 2 or those fragments having at least 90% identity to a fragment of SEQ ID NO: 2 . . . .” Office Action, page 6.

Solely to advance prosecution and without disclaimer of or prejudice to the subject matter recited therein, Applicants amend claim 4 to remove reference to a “fragment”. Accordingly, the rejections of claim 4 and dependent claims 5, 7, 9, 11, 14, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 39 under 35 U.S.C. § 112, first paragraph, are moot.

#### **IV. The Claims Are Not Anticipated**

The Examiner maintains the rejection of claims 4, 5, 7, 21, 23, 25, 27, 31, 33, and 39 under 35 U.S.C. § 102(b) as allegedly being anticipated by Kuo. Office Action, at page 7. Specifically, the Examiner alleges that Kuo teaches “fragments having at least 90% identity to a fragment of SEQ ID NO: 2 . . . .,” and thus, allegedly anticipates the instant application. Office Action, page 8.

Solely to advance prosecution and without disclaimer of or prejudice to the subject matter recited therein, Applicants amend claim 4 to remove reference to a “fragment”. Accordingly, the rejections of claim 4 and dependent claims 5, 7, 21, 23, 25, 27, 31, 33, and 39 under 35 U.S.C. § 102(b), are moot.

**SUMMARY**

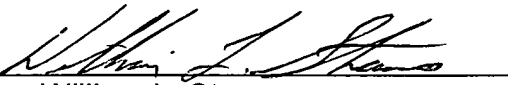
In view of the above amendments and remarks, Applicants submit that this application is in condition for allowance. An early and favorable action is earnestly solicited.

Please grant any extensions of time required to enter this amendment and response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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Dated: September 30, 2005

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